MINORITY BUSINESS DEVELOPMENT ACT OF 1988—H.R. 1769

HEARING

BEFORE THE

SUBCOMMITTEE ON PROCUREMENT, INNOVATION, AND MINORITY ENTERPRISE DEVELOPMENT

OF THE

COMMITTEE ON SMALL BUSINESS HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

WASHINGTON, DC, JUNE 30, 1988

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MINORITY BUSINESS DEVELOPMENT ACT OF 1988—H.R. 1769

THURSDAY, JUNE 30, 1988

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PROCUREMENT, INNOVATION, AND
MINORITY ENTERPRISE DEVELOPMENT,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:06 a.m., in room 2359–A, Rayburn House Office Building, Hon. Ike Skelton (chairman of the subcommittee) presiding.

Present: Chairman Skelton; Representatives Torres, Rhodes, Conte, Gallo, and Mfume.

Chairman SKELTON. Ladies and gentlemen, welcome to our subcommittee hearing. First let me explain our two objectives today, to begin there will be a short hearing with testimony for the record from our colleague from the State of Maryland, the author of the bill under consideration today, and a distinguished member of this panel, Mr. Mfume. He will review for our subcommittee the history of H.R. 1769, which is known as the Minority Business Development Act. I also trust he'll go briefly over the changes that have been worked out, which form the basis of a substitute which will be offered at a later moment this morning.

At the conclusion of his testimony there will be an opportunity for questions, or any further statements. Mr. Conte isn't here yet. We will, of course, ask him also.

At that point I intend to adjourn the hearing and convene a markup of this bill, which I believe should go smoothly, at least according to the information supplied to me.

This is an important piece of legislation which has strong backing from every major minority business group. And let me say that I commend my colleague from Maryland for his tireless efforts on behalf of small businesses everywhere, and minority small businesses, in the particular case in hand on this bill.

Mr. Mfume's active participation on the Small Business Committee is very welcome. It is also a great value. And we appreciate his advice and counsel.

At this point we will recognize the gentleman from Maryland concerning H.R. 1769.

[Mr. Skelton's statement may be found in the appendix.]

Mr. MFUME. Thank you very much, Mr. Chairman. I thank you for those kind remarks as well.

Mr. Chairman, before giving my prepared remarks I'd like to ask unanimous consent that the remarks of the former chairperson of this subcommittee, the distinguished gentleman from Massachusetts, be entered into the record. He submitted a statement.

Chairman SKELTON. Without objection.

Mr. MFUME. Thank you very much.

Chairman SKELTON. Do we have copies of it? Just make sure.

Mr. MFUME. OK. Thank you.

[Mr. Mavroules' statement may be found in the appendix.]

Mr. MFUME. Mr. Chairman, I appear before the subcommittee this morning both in my capacity as a member of the subcommittee and as a sponsor of the Minority Business Development Act.

Accordingly, I want to thank you again for giving me the opportunity to express my views to the members of the subcommittee, and of course for scheduling this markup.

This legislation is extremely important to me. I've worked long and hard at being able to get to this point. And I want to testify just prior to the markup because I feel it is important to reiterate the importance of H.R. 1769 to the minority business community, and I wanted also the opportunity to dialogue with other members of our subcommittee to ensure that everyone is informed of what the legislation has grown to become, and the current status of the Minority Business Development Agency as well.

My sincere thanks go out to the ranking minority member of this subcommittee, Mr. Conte and others on the minority side who have worked with myself and with my staff in formulating language that we, at long last, can all agree upon.

In many ways I feel that the bill has been strengthened. And I am happy today that we are able to offer a joint substitute in the form of a committee print.

We all know that over the years, African-ancestored Americans and Latin-ancestored Americans, and other racial and ethnic minorities have suffered the effects of racial discrimination, a discrimination, I think, which has impaired the ability of the minority business community to access resources and markets essential to economic viability.

Both Congress and various administrations have sought to formulate programs designed to counteract the perpetuated inequities.

And one such administration was the Nixon administration which issued a 1969 Executive Order 11458, establishing the Minority Business Development Agency, and a subsequent Executive Order 11625, that strengthened the MBDA.

Today, as the question is asked of whether or not there remains a compelling need for a special Federal program to provide socially and economically disadvantaged persons the opportunity for full participation in our free enterprise system, the answer unfortunately remains yes.

The need to devote Federal resources to assist minority businesses in overcoming economic disadvantages is no less apparent today, and is evidenced by the continuing enactment of legislation, providing opportunities for racial and ethnic minorities to participate in Federal, State, and in local programs.

The Minority Business Development Agency was created, as you know, to preserve and to strengthen minority businesses in this Nation.

This is the only agency of the United States Government created specifically to promote the creation and/or expansion of minority businesses.

The executive order issued again in 1969 under which MBDA currently operates identified a compelling Government interest in obtaining social and economic justice and improving the functioning of our national economy.

The means were further established through a cabinet level agency under direct supervision of the Secretary of Commerce, and not until 1987 had any administration formally challenged the aptness of MBDA's operation with in-comers.

In 1987, and again this year, unfortunately, there have been proposals to transfer the functions of the MBDA to the Small Business Administration.

Proponents suggest that such a transfer will consolidate programs, and allow for improved coordination. But the same proponents are the ones who have argued for the abolishment of the SBA, charging that the agency was ineffective in carrying out its mandate, and the SBA subsequently was charged with mismanagement and corruption.

To advocate today for the SBA to encompass the functions of another agency under the guise of a more efficient and more enhanced service is to further burden the SBA.

As you know, the SBA was created in 1954 for a specific purpose identified by this Congress and the administration then, and that this particular agency was created to fulfill an additional purpose.

Chairman SKELTON. Let me interrupt you at this point.

Mr. MFUME. Sure.

Chairman SKELTON. As I understand it, there was a proposal put to the MBDA with the Small Business Administration that would have eliminated the SBA, is that correct?

Carrying all that goes with it, is that——

Mr. MFUME. I can't prove that, Mr. Chairman. But my suspicions were that given previous attempts to do away with the SBA it didn't make a lot of sense now to take an agency which was created to fill a need that the SBA was not designed to create, and then to put that agency under the SBA and assume that it can do both.

I think we do a disservice to the Small Business Administration, as well as to the minority business enterprise when doing that.

Chairman SKELTON. Excuse me for interrupting.

Mr. MFUME. Moreover, the SBA proclaims that they want to bring about more efficient and effective service to minority businesses.

Their budget request, however, for their own agency shows very little sensitivity toward doing that. And no real desire, I think, to provide services because I don't think they can provide services given their mandate and their mission.

For fiscal year 1989 they called for the elimination of SBA direct loans now provided to minorities. These are loans of last resort,

and can only be made if the applicant cannot secure funds from any other resources.

They also called for the reduction of the amount of loan guarantees. These guarantees entice lenders, as you know, to make loans to minority businesses.

They went further, Mr. Chairman, to call for the elimination of the minority assistance now provided through consulting contracts under the 7J program, and the elimination of the business development expense funds.

Elimination also of the special incentives to minority business enterprise investment companies has been advocated. MESBIC's, as you know, are encouraged to provide venture capital to minority businesses, and their budget proposal further seeks to phase out management assistance, being provided through the small business development centers.

Cumulatively, to me this shows no real indication or any desire to provide adequate services to minority businesses. There are unequivocal differences between the functions and the activities of the Small Business Administration which seeks to ensure that small business concerns encounter fairness in competition, and serves more of a financing and a direct lending function, and the MBDA, on the other hand, which seeks to protect fundamental rights of minority businesses to fully participate in the Nation's economic structure.

The MBDA offers management and technology, commercialization assistance, acquisitions assistance, franchising assistance, and private sector assistance to all of those businesses which the SBA has no similar program for.

Now most minority businesses that are served by SBA's are companies that have been certified as 8(a). There are currently 3,000 or so certified 8(a) companies as compared to 700,000 minority business enterprises.

Also, only 3.5 percent of the clients that MBDA services are 8(a) companies.

And so the creation of MBDA within the Department of Commerce was carefully thought out and recognized the Federal Government's role in helping to remove the barriers of which minority businesses are faced with.

Codifying the Agency within the Department of Commerce is our opportunity to continue providing for equitable participation for minorities in the mainstream of American businesses.

The substitute, which will be offered today, addresses concerns about access to equity capital, not through the originally proposed revolving fund, but rather through the mandate of a study into alternative ways of providing access to capital.

And we have been able to agree also on other minor changes in the language that all staff members have been made aware of, and that I will be happy to elaborate on if necessary.

The legislation can basically be broken down into six general parts, with the first four sections setting out the purpose of the act, defining terms and establishing the Minority Business Development Administration.

Titles I through IV outline the MBDA's duties in four areas.

They are market development, capital formation, management educational development, and research and information.

And Title V of the bill sets forth the MBDA's administrative and miscellaneous powers.

Mr. Chairman, it's extremely important to point out that I think we have to act to place the Minority Business Development Agency on stable ground.

Not only is the Agency the subject of the administration's and whatever whimsical views may develop here on the Hill or elsewhere here in Washington, but it's also subject to appropriation struggles, without the proper authorization.

This year, appropriations in the House were held off for all programs still awaiting authorizations. The Minority Business Development Agency was categorized with this group of programs, however, the problem in that is that the MBDA, being lumped into this category is the only Agency that has never gone through the authorization process simply because it operates on an executive order.

Thus, appropriations for commerce has been passed in the House without funding for MBDA.

The commitment to aiding minority businesses, I think, must become a fundamental integrated part in the American economic system at all levels. And in establishing that integral part, the MBDA, again, I believe, must be placed on solid ground.

And so today we have a significant opportunity to rid the MBDA of its vulnerable status by codifying it, and thereby bringing control of the Agency within greater reach of the Congress, and providing ourselves with the chance to play a role in further strengthening and making strong the Agency's goals and the Agency's objective.

H.R. 1769 has the complete support of the Congressional Black Caucus, as well as all major trade associations throughout our Nation, and a number of other groups that run the gamut of the spectrum, which represent the interest of minority businesses.

And I am hoping for the complete support of other segments of our community.

Again, let me offer my thanks to Mr. Conte, the ranking minority member of the subcommittee for his help in crafting this committee print.

It's been extremely important to me that this legislation receive bipartisan support. And so we've tried to work in that manner by seeking to compromise and to make changes, and to bring about something that we all feel very good about.

I was particularly pleased two weeks ago to read the remarks of Vice President Bush who, while speaking at the Central State University in Wilberforce, OH, indicated that he wanted to make this a priority in his own administration, that he thought it was just that important.

Those kinds of comments are encouraging. The support for this bill throughout the Congress has been encouraging. And I'm hoping that we can move it out of subcommittee to full committee so that we can begin the process of getting it on the Floor of the House for a vote.

With that, Mr. Chairman, I thank you very much, and I yield back my time.

[Mr. Mfume's statement may be found in the appendix.]

Chairman SKELTON. Thank you so much. At this time the Chair will recognize the gentleman from Massachusetts, Mr. Conte.

Mr. CONTE. Thank you, Mr. Chairman.

We have before us today legislation which I feel is very vital to the minority community. With it comes a golden opportunity to assist all American minorities-owned businesses.

H.R. 1769, as amended, will make permanent the Minority Business Development Administration in the Department of Commerce.

I believe it will complement the comprehensive work of this committee when it approved H.R. 1807, the Mavroules-Conte Reform Bill, the 8(a) Reform Bill.

I commend the Chair for his sensitivity in scheduling this markup and for his leadership during the pre-markup negotiations. I also commend my good friend, the author of H.R. 1769, Congressman Mfume, for his genuine concern in authoring the bill and for his leadership in coauthoring important amendments that will provide the strong bipartisan coalition needed for passage.

He has accomplished much his Freshman year and he has much to be proud of.

Mr. Chairman, this is a good bill. It will end, once and for all, the uncertainty over the existence of MBDA, and I urge all of my colleagues to support it.

Please remember in your consideration today that for the minority community equality of participation in our economic system is just as important as equality in civil rights.

American minority entrepreneurs look to all of us for support of this issue. There's a lot of interest and support out there in the community.

And certainly, I hope the subcommittee will pass it this morning.

Chairman SKELTON. Thank you so much. I have one question. And I will open the floor momentarily for questions to the author.

The MBDA, as you pointed out, was created by executive order, and still exists by executive order, is that correct?

Mr. MFUME. That is correct, Mr. Chairman.

Chairman SKELTON. But as a result of that, when appropriations come flowing through Congress there is no appropriation earmarked for the MBDA, is that correct?

Mr. MFUME. That is correct.

Chairman SKELTON. Which means that the Department of Commerce uses parts of its funds, is that right, to fund anything, or what happens?

Mr. MFUME. It has been my understanding of institutional history, Mr. Chairman, that previously Ways and Means has found a way to work out an arrangement with other committees, Appropriations and others, so that this does, in fact, take place.

However, with the budget arrangement that the Congress and the President worked out, and under the guidelines of Appropriations this year, if you're not authorized you do not get appropriated.

Chairman SKELTON. OK. So you are out in the cold.

Mr. MFUME. Oh, yes. Very much so. And that's one of the fears I have about this. It was a great idea in 1969. I commend former President Nixon for establishing it.

I am just hoping that the Congress moves now to do what, perhaps, we should have done many years ago, and that is to codify it so that it is not in this vulnerable position.

Chairman SKELTON. If legislation does not pass, what happens October the first, or thereafter?

Mr. MFUME. That is a good question. We are trying to work with Members of the Senate to find a way to get appropriations for the Agency.

Quite frankly, I am sorry that it didn't take place on the House side. Again, the budget arrangement, or the budget agreement, I think, preempted that.

And we are in a bad situation. The Agency is in a bad situation at this moment.

Chairman SKELTON. Thank you. Mr. Torres.

Mr. TORRES. Thank you, Mr. Chairman. I really do not have any questions of our colleague who has taken tremendous initiative in introducing this legislation. It is long overdue.

I want to commend him for taking the steps to do this. I have followed the MBDA for many years. It has been an up and down battle, whether it would be phased out, disappear, or survive.

But I think that with the type of legislation he has proposed here, we can look forward to seeing a more permanent organization or permanent agency really working with the communities that Mr. Mfume has addressed himself to here.

So no questions, Mr. Chairman. I simply want to compliment Mr. Mfume.

Chairman SKELTON. Thank you.

Mr. Rhodes?

Mr. RHODES. Thank you—excuse me, Mr. Chairman.

I do have a question. I am very pleased to be able to lend my support to this bill and to the purposes it seeks to address.

As I usually do when given the opportunity, I would add to Mr. Mfume's reference to the Black community and to the Hispanic community, reference to the Indian community which, likewise, would be benefited by the provisions of this bill.

But I do have a question here.

Chairman SKELTON. You do not have your microphone on.

Mr. RHODES. Yes; I do. I guess I am not close enough.

I do have a question, Mr. Chairman. If this legislation passes—and I hope it does—which committee of the House will have oversight functions over the MBDA?

Will the Committee on Small Business lose its oversight functions as a result of the passage of this bill? Will it fall under the purview of Energy and Commerce, or will we retain that function?

Chairman SKELTON. Excuse me. My counsel advises me that the Small Business Committee has general oversight jurisdiction over anything that touches small business.

The legislative committee, however, would be Energy and Commerce. But I think that it would be well within our jurisdiction on oversight.

Mr. RHODES. I hope we would jealously guard that. I think that if we are going to create it we ought to keep it, at least for oversight.

Mr. MFUME. I agree totally. Let me just add that you are correct, that there are other minorities, ethnic minorities and racial minorities that would, in fact, be assisted by the bill.

One of the interesting things we were able to work out is with Mr. Solarz, the gentleman from New York, who had an overriding interest that Hassidic Jews continue to be considered part of affected minorities by the MBDA.

And that was part of the process that staff people worked out, and is included in the committee print.

Chairman SKELTON. Mr. Gallo.

Mr. GALLO. I would like to congratulate my colleague for bringing this to this subcommittee, and also the chairman, and ranking minority member Conte.

I think it is a bill that is long overdue. We do need the assurances of permanent legislation for the Minority Business Development Agency, rather than in regulation form. And I think it is one that will benefit many, many people.

Mr. MFUME. Thank you.

Mr. GALLO. Thank you very much.

Chairman SKELTON. Thank you. Let me add my personal congratulations to you and commend you for your excellent work. You have done a yeoman's work on this.

It looks like it is in excellent shape. I appreciate your working on it ahead of time so we don't have the bugs to work out moment by moment.

It is a job well done.

Mr. MFUME. Thank you very much, Mr. Chairman.

Chairman SKELTON. At this time we will adjourn the hearing and we will reopen the subcommittee.

[Whereupon, at 9:30 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

I

100TH CONGRESS
1ST SESSION

H. R. 1769

To establish a Minority Business Development Administration in the Department of Commerce, to clarify the relationship between such Administration and the Small Business Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1987

Mr. MFUME (for himself, Mr. CLAY, Mr. CONYERS, Mr. DELLUMS, Mr. DYMALLY, Mr. FLAKE, Mr. HAWKINS, Mr. HAYES of Illinois, Mr. LELAND, Mr. LEWIS of Georgia, Mr. SAVAGE, Mr. SOLARZ, Mr. WORTLEY, and Mrs. COLLINS) introduced the following bill; which was referred jointly to the Committees on Banking, Finance and Urban Affairs and Small Business

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A BILL

To establish a Minority Business Development Administration in the Department of Commerce, to clarify the relationship between such Administration and the Small Business Administration, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Minority Business Development Act of 1987".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) the opportunity for full participation in our free enterprise system by socially and economically disadvantaged individuals is essential if we are to obtain social and economic equality for such individuals and improve the functioning of our national economy;

(2) that many such individuals are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(3) such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and other minorities;

(4) it is in the national interest to expeditiously ameliorate the conditions of socially and economically disadvantaged groups;

(5) such conditions can be improved by providing the maximum practicable opportunity for the development of business concerns owned by members of socially and economically disadvantaged groups;

(6) such opportunity cannot be fully realized unless the Federal Government secures the participation and cooperation of the private sector in a joint

effort to promote the development of business owned by disadvantaged individuals; and

(7) such effort will result in a more equitable share of productive resources being devoted to business owned by the disadvantaged and will promote a balanced economy and increased competition.

(b) It is, therefore, the purpose of this Act to—

(1) establish an Administration within the Department of Commerce which will promote and administer programs in the private and public sectors to assist the development of business owned by the disadvantaged; and

(2) achieve such development through the conduct of programs which will result in increased access to skilled labor, capital, management, and technology by such business.

DEFINITIONS

SEC. 3. As used in this Act:

(1) The term "Secretary" means the Secretary of Commerce.

(2) The terms "State", "States", and "United States" include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories of the Virgin Islands, Guam, and American

Samoa, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(3) The terms "socially and economically disadvantaged business concerns" and "disadvantaged business" means any for-profit business enterprise which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of such individuals.

(4) The term "socially disadvantaged individuals" means those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(5)(A) The term "economically disadvantaged individuals" means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

(B) The Assistant Secretary shall presume that socially and economically disadvantaged individuals in-

clude Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act and other individuals belonging to other minority groups which the Small Business Administration may, from time to time, determine to be socially and economically disadvantaged groups pursuant to Public Law 95–507.

(6) The term "Administration" means the Minority Business Development Administration established by this Act.

(7) The term "Assistant Secretary" means the Assistant Secretary of the Minority Business Development Administration.

(8) The term "agency" means any executive agency as defined in section 105 of title 5, United States Code, and the military departments as defined by section 102 of title 5, United States Code.

(9) The term "public sector" means any State, State agency, political subdivision of a State, or agency of such a political subdivision.

(10) The term "private sector" means any entity which is not in the public sector excluding the Federal Government, its agencies and instrumentalities.

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MINORITY BUSINESS DEVELOPMENT ADMINISTRATION

SEC. 4. (a) The Minority Business Development Agency in the Department of Commerce is hereby redesignated and established as the "Minority Business Development Administration". The Administration shall be headed by an Assistant Secretary of Commerce appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule and shall have responsibility for the administration of this Act. This position shall be in addition to the other positions of Assistant Secretary which are authorized by law.

(b) Within one hundred and twenty days after the effective date of this subsection, the Secretary shall inform appropriate committees of both the Senate and House of Representatives of—

(1) the organizational structure established within the Administration;

(2) the organizational position of the Administration within the Department of Commerce; and

(3) a description of how the Administration shall function in relation to the operations of other agencies within the Department.

TITLE I—MARKET DEVELOPMENT

PRIVATE SECTOR

SEC. 101. (a) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(1) to assist disadvantaged business concerns penetrate domestic and foreign markets by making available to such concerns, either directly or in cooperation with private sector organizations, management, and technological assistance, a skilled labor pool and financial and marketing services; and

(2) to encourage disadvantaged firms to establish joint ventures and projects either among themselves or in cooperation with public or private sector organizations for the purpose of increasing the share of any market activity now being performed by disadvantaged business.

(b) For purposes of subsection (a)(2):

(1) The Assistant Secretary may, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, and with the prior written approval of the Attorney General, approve any agreement between such disadvantaged firms or public or private sector organizations providing for a joint program for market development if the Assistant Sec-

retary finds that the joint program proposed will maintain and strengthen the free enterprise system and the economy of the Nation. The Assistant Secretary or the Attorney General may at any time withdraw approval of the agreement and the joint program for market development covered thereby, if either finds that the agreement or the joint program carried on under it is no longer in the best interests of the competitive free enterprise system and the economy of the Nation. A copy of the statement of any such finding and approval intended to be within the coverage of this paragraph, and a copy of any modification or withdrawal of approval, shall be published in the Federal Register. The authority conferred by this on the Assistant Secretary shall not be delegated.

(2) No act or omission to act, pursuant to and within the scope of any joint program for market development under an agreement approved by the Assistant Secretary under the subsection, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act. Upon publication in the Federal Register of the notice of withdrawal of his approval of the agreement granted under this paragraph, either by the Assistant Secretary or by the At-

torney General, the provisions of this paragraph shall not apply to any subsequent act or omission to act.

(c) In order to carry out the purposes of this section, the Administration is hereby authorized to provide financial assistance in the form of contracts, grants, or cooperative agreements to and with public and private sector organizations, including any association, business firm, trade association, or business organization. No assistance may be provided under the authority of this subsection if such assistance is primarily intended to facilitate the use by disadvantaged business of federally administered programs (not otherwise established by this Act) unless the Assistant Secretary obtains the prior concurrence and written approval of the Associate Administrator for Minority Small Business and Capital Ownership Development of the Small Business Administration.

PUBLIC SECTOR

SEC. 102. (a) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(1) to consult and cooperate with State and local governments for the purpose of leveraging local resources to promote the position of disadvantaged business in the local economy, including, but not be limited to, assisting such governments to establish—

(A) procurement programs and goals for the utilization of disadvantaged business,

(B) management and technological assistance programs,

(C) financial and marketing assistance programs,

(D) mobilization activities designed to attract skilled labor for use by disadvantaged firms, and

(E) an informational program designed to inform local disadvantaged business of the availability of programs conducted under the authority of this section, and

(2) to convene meetings with leaders and officials of State and local governments for the purpose of recommending and promoting local administrative and legislative initiatives needed to advance the position of disadvantaged business in the local economy.

(b)(1) In order to carry out the purposes of subsection (a) the Administration is hereby authorized to provide financial assistance to State and local governments in the form of contracts, grants, or cooperative agreements.

(2) When allocating financial assistance among the several States (and cities within such States) pursuant to paragraph (1) the Administration shall only consider the relative—

(A) populations of disadvantaged individuals;

(B) numbers of disadvantaged businesses; and

(C) unemployment rates of disadvantaged individuals.

(3) At least one hundred and twenty days before the beginning of each fiscal year, the Administration shall publish for public comment in the Federal Register the actual or anticipated amount of financial assistance that will or may be available in the immediately succeeding fiscal year for grants, contracts and cooperative agreements planned to be awarded pursuant to this section. Such publication shall also identify the proposed allocation of funds between the several States (and cities within such States) and the exact methodology used by the Administration to make such proposed allocations.

(4) At least sixty days prior to the beginning of each fiscal year, the Administration shall publish in the Federal Register its response to comments received pursuant to paragraph (3) and any change in the allocation methodology which may be adopted as a result thereof including its effect on the allocation of funds on the several States (and cities within such States) for the immediately succeeding fiscal year.

TITLE II—CAPITAL FORMATION

ACCESS TO EQUITY CAPITAL

SEC. 201. (a) The Administration is hereby authorized to defray all or part of the costs of pilot or demonstration projects conducted by public or private organizations which are designed to assist disadvantaged business in obtaining access to equity capital.

(b) The Securities and Exchange Commission shall consult and cooperate with the Administration in an effort to promote access by disadvantaged business to securities markets and otherwise achieve the purposes of this title.

REVOLVING FUND

SEC. 202. (a) There is hereby established within the Treasury a revolving fund which shall be available to the Administration, without fiscal year limitation, for financing functions performed pursuant to this section. All amounts received by the Administration by reason of this section shall be deposited in the fund. All expenses, including administrative expenses, pursuant to operations of the Administration under this section shall be paid from the fund.

(b) For the purpose of obtaining capital for the revolving fund established pursuant to subsection (a), the Administration is hereby authorized to accept or acquire, in any lawful manner, any gift, donation, bequest or contribution from any source whatsoever.

(c)(1) The Administration is hereby authorized to use the proceeds of the revolving fund established under this section to provide financial assistance to qualified disadvantaged business concerns by purchasing equity investments in such concerns. Such financial assistance may be provided to a qualified disadvantaged business concern only if the Administration determines—

(A) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;

(B) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

(C) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion or expansion, including the acquisition of real property; or to finance the acquisition of equipment, facilities, machinery, supplies, or materials; or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or materials for defense or civilian production or as may be necessary to insure a well-balanced national economy;

(D) such assistance is of such sound value as reasonably to assure that the terms under which it is pro-

vided will not be breached by the business concern; and

(E) the salaries and other compensation of individuals within the employ of such concern are not unreasonable with respect to services actually rendered.

(2) The amount of equity investments purchased by the Administration and outstanding at any one time from any qualified disadvantaged business concern (including its affiliates) shall not exceed $2,000,000.

(3)(A) For the purpose of this section the term "qualified disadvantaged business concern" means any disadvantaged business which is, and will remain during the term of such financial assistance, engaged in a manufacturing or production activity which has a high growth potential. In determining high growth potential, the Administration shall take into account the extent and rate at which such activity—

(i) may expand employment;

(ii) may produce increases in the gross receipts of such activity;

(iii) may develop or utilize technological innovation; and

(iv) may create, expand or satisfy domestic or international markets for the product or products produced by such activity.

(B) For the purpose of this section, the term "equity investments" means—

(i) nonvoting stock (or other corporate securities having similar characteristics) which contain such dividend rate and terms pertaining to liquidation and redemption as the Administration deems appropriate;

(ii) any ownership interest in any disadvantaged business which is not a corporation (including any limited partnership interest or share in a syndicate, business trust, joint stock company or association, mutual corporation, cooperative, or other joint venture for profit) if such interest does not entitle the Administration to vote or otherwise participate in the management of such concern and contains such other terms and conditions as the Administration deems appropriate; and

(iii) any right to acquire any security or interest described in (i) and (ii) but only if such right is purchased in connection with a purchase under (i) or (ii).

(d) Notwithstanding any other provision of law, any gift, donation, bequest or contribution from a private sector source which is accepted by the Administration pursuant to subsection (b) shall be deemed to be a charitable contribution to the United States made for exclusively public purposes.

TITLE III—MANAGEMENT EDUCATIONAL DEVELOPMENT

DUTIES OF THE ADMINISTRATION

SEC. 301. It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate to—

(1) promote and assist the education and training of disadvantaged individuals in subjects directly related to business administration and management;

(2) join with and encourage accredited colleges and universities, leaders in business and industry, or other public or private entities to develop programs to offer scholarships and fellowships, apprenticeships, internships, and to sponsor seminars and conferences, and similar activities related to business for the benefit of disadvantaged individuals;

(3) stimulate and accelerate curriculum design and improvement in support of disadvantaged business development; and

(4) encourage and assist private institutions and organizations and State and local government agencies to undertake similar activities.

TITLE IV—RESEARCH AND INFORMATION

DUTIES OF THE ADMINISTRATION

SEC. 401. (a) Not later than one year after the effective date of this subsection, the Administration shall submit to the Congress a report detailing the types and amounts of productive resources (both public and private) needed to advance and represent disadvantaged business at all phases and levels of the economic system in numbers that would have existed were it not for past discrimination. The report shall provide separate information for achieving the condition described in the preceding sentence predicated on the basis of a ten-year program, a fifteen-year program, and a twenty-year program.

(b)(1) In order to achieve the purposes of this Act, the Administration shall—

(A) collect and analyze data, including, but not limited to, the causes for success or failure of businesses owned by the disadvantaged,

(B) perform evaluations of private and public sector programs designed to assist the development of disadvantaged business; and

(C) conduct research, studies, and surveys of economic conditions generally and how such conditions particularly affect the development of disadvantaged business.

(2) The Administration is hereby authorized to provide financial assistance by contract, grant, or cooperative agreement to public and private organizations to assist the Administration in carrying out the provisions of paragraph (1).

(3) The Administration is hereby authorized to—

(A) develop and maintain, on a current basis, a data bank on disadvantaged business, except that—

(i) such activity shall be conducted in cooperation and consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development of the Small Business Administration, and

(ii) such data bank does not duplicate the information stored or capable of being stored by the procurement automated source system (PASS) maintained by the Small Business Administration; and

(B) establish and maintain an information clearinghouse for the collection and dissemination of demographic, economic, financial, managerial, and technical data pertinent to disadvantaged business and, to this end, to take such steps as the Administration may deem necessary and desirable to search for, collect, classify, coordinate, integrate, record, and catalog such information.

TITLE V—ADMINISTRATIVE AND MISCELLANEOUS POWERS OF THE ADMINISTRATION

ADMINISTRATIVE POWERS

SEC. 501. In performing the duties under this Act, the Administration is authorized to—

(1) adopt and use a seal for the Minority Business Development Administration which shall be judicially noticed;

(2) hold hearings, sit and act, and take testimony as the Administration may deem advisable;

(3) acquire in any lawful manner any property as the Administration may deem necessary or appropriate to conduct the activities authorized in this Act;

(4) make advance payments under grants, contracts, and cooperative agreements;

(5) donate without cost (except for costs of care and handling) for use in any Federal, State, or local government or in any recipient nonprofit organization for purposes of the development of disadvantaged business any real or tangible personal property acquired by the Administration under this Act. The Administration may impose reasonable terms, conditions, reservations, and restrictions upon the use of any property donated under this section;

(6) enter into agreements with other Federal agencies;

(7) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, to compensate individuals so employed at rates not in excess of the per diem rate authorized for GS–18 of the General Schedule, including traveltime, and allow them travel expenses (including per diem in lieu of subsistence) while away from their homes or regular places of business, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed: *Provided, however,* That contracts for such employment may be renewed annually;

(8) sue and be sued in any court of record of a State having general jurisdiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, garnishment, or other similar process, mesne or final, shall be issued against the Administration or its property. Nothing herein shall be construed to except the activities under this Act from application of sections 507(b), 517, and 2679 of title 28, United States Code; and

(9) prescribe such rules, regulations, and procedures as the Administration may deem appropriate to carry out the provisions of this Act.

AUDITS

SEC. 502. (a) Each recipient of assistance under this Act shall keep such records as the Administration shall prescribe, including records which fully disclose the amount and the disposition by the recipient of the proceeds of such assistance, the total cost of the undertaking for which such assistance is given or used, the amount and nature of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Assistant Secretary, the Inspector General of the Department of Commerce, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit, investigation, and examination to any books, documents, papers, records, and other materials of the recipient which are pertinent to the assistance received under this Act.

(c) Not later than July 1, 1988, the Comptroller General of the United States shall conduct a thorough review of the programs authorized by this Act and shall transmit to the Congress a detailed report of the Comptroller's findings, including therein an evaluation of the effectiveness of the programs authorized to achieve the purpose of this Act, a de-

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scription of any failure to comply with the requirements of this Act, and recommendations for corrective legislative or administrative action.

ANNUAL REPORT

SEC. 503. The Assistant Secretary shall, not later than one hundred and twenty days after the close of each fiscal year, submit to the President a full report of the Administration's activities hereunder during the previous fiscal year. Further, the Assistant Secretary shall, from time to time, submit to the President recommendations for legislation or other actions as the Assistant Secretary deems desirable to promote the purposes of this Act. Each Federal agency shall consult with the Assistant Secretary on a timely basis so that the Assistant Secretary may consider them for the Assistant Secretary's report and recommendations to the President.

SEPARABILITY

SEC. 504. If any provision of this Act or the application thereof to any persons or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its application to other persons and circumstances, but shall be confined in its operation to the provision of this Act or the application thereof to the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered.

AUTHORITY OF ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT

SEC. 505. (a) Section 7(j)(11) of the Small Business Act is amended to read as follows:

"(11) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to assistance provided by Federal agencies (excluding the Minority Business Development Administration) to small business concerns described in section 7(i) and small business concerns owned and controlled by the socially and economically disadvantaged as defined pursuant to section 8(d).".

(b) Nothing in this Act is intended to duplicate or limit any programs or projects administered by the Small Business Administration.

(c) Each Federal agency shall cooperate and consult with the Administration and the Small Business Administration to facilitate the accomplishment of the purposes of this Act and the Small Business Act.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 506. There are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act other than

those for which appropriations may from time to time be specifically authorized.

TERMINATION OF AUTHORITY UNDER EXECUTIVE ORDER NUMBERED 11625

SEC. 507. Beginning on the date of the enactment of this Act, the powers and duties of the Administration shall be determined without regard to Executive Order Numbered 11625.

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[COMMITTEE PRINT]

JUNE 30, 1988

[Mfume-Conte Amendment in the Nature of a Substitute, As Amended and Reported by the Subcommittee on Procurement, Innovation and Minority Enterprise Development]

100TH CONGRESS
1ST SESSION

H. R. 1769

To establish a Minority Business Development Administration in the Department of Commerce, to clarify the relationship between such Administration and the Small Business Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1987

Mr. MFUME (for himself, Mr. CLAY, Mr. CONYERS, Mr. DELLUMS, Mr. DYMALLY, Mr. FLAKE, Mr. HAWKINS, Mr. HAYES of Illinois, Mr. LELAND, Mr. LEWIS of Georgia, Mr. SAVAGE, Mr. SOLARZ, Mr. WORTLEY, and Mrs. COLLINS) introduced the following bill; which was referred jointly to the Committees on Banking, Finance and Urban Affairs and Small Business

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A BILL

To establish a Minority Business Development Administration in the Department of Commerce, to clarify the relationship between such Administration and the Small Business Administration, and for other purposes.

J.86-527—O——1

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Minority Business Development Act of 1987".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) the opportunity for full participation in our free enterprise system by socially and economically disadvantaged individuals is essential if we are to obtain social and economic equality for such individuals and improve the functioning of our national economy;

(2) that many such individuals are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(3) such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and other minorities;

(4) it is in the national interest to expeditiously ameliorate the conditions of socially and economically disadvantaged groups;

(5) such conditions can be improved by providing the maximum practicable opportunity for the develop-

ment of business concerns owned by members of socially and economically disadvantaged groups;

(6) such opportunity cannot be fully realized unless the Federal Government secures the participation and cooperation of the private sector in a joint effort to promote the development of business owned by disadvantaged individuals; and

(7) such effort will result in a more equitable share of productive resources being devoted to business owned by the disadvantaged and will promote a balanced economy and increased competition.

(b) It is, therefore, the purpose of this Act to—

(1) establish an Administration within the Department of Commerce which will promote and administer programs in the private and public sectors to assist the development of business owned by the disadvantaged; and

(2) achieve such development through the conduct of programs which will result in increased access to skilled labor, capital, management, and technology by such business.

DEFINITIONS

SEC. 3. As used in this Act:

(1) The term "Secretary" means the Secretary of Commerce.

(2) The terms "State", "States", and "United States" include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories of the Virgin Islands, Guam, and American Samoa, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(3) The terms "socially and economically disadvantaged business concerns" and "disadvantaged business" means any for-profit business enterprise which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of such individuals.

(4) The term "socially disadvantaged individuals" means those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(5)(A) The term "economically disadvantaged individuals" means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and

credit opportunities as compared to others in the same business area who are not socially disadvantaged.

(B) The Assistant Secretary shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act, other individuals so designated by the Minority Business Development Agency under section 1400.1 of title 15 of the Code of Federal Regulations (as in effect on October 1, 1986), and other individuals belonging to other minority groups which the Small Business Administration may, from time to time, determine to be socially and economically disadvantaged groups pursuant to Public Law 95–507.

(6) The term "Administration" means the Minority Business Development Administration established by this Act.

(7) The term "Assistant Secretary" means the Assistant Secretary of the Minority Business Development Administration.

(8) The term "agency" means any executive agency as defined in section 105 of title 5, United

States Code, and the military departments as defined by section 102 of title 5, United States Code.

(9) The term "public sector" means any State, State agency, political subdivision of a State, or agency of such a political subdivision.

(10) The term "private sector" means any entity which is not in the public sector excluding the Federal Government, its agencies and instrumentalities.

MINORITY BUSINESS DEVELOPMENT ADMINISTRATION

SEC. 4. (a) The Minority Business Development Agency in the Department of Commerce is hereby redesignated and established as the "Minority Business Development Administration". The Administration shall be headed by an Assistant Secretary of Commerce appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule and shall have responsibility for the administration of this Act. This position shall be in addition to the other positions of Assistant Secretary which are authorized by law.

(b) Within one hundred and twenty days after the effective date of this subsection, the Secretary shall inform appropriate committees of both the Senate and House of Representatives of—

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(1) the organizational structure established within the Administration;

(2) the organizational position of the Administration within the Department of Commerce; and

(3) a description of how the Administration shall function in relation to the operations of other agencies within the Department.

TITLE I—MARKET DEVELOPMENT

PRIVATE SECTOR

SEC. 101. (a) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(1) to assist disadvantaged business concerns penetrate domestic and foreign markets by making available to such concerns, either directly or in cooperation with private sector organizations, management, and technological assistance, a skilled labor pool and financial and marketing services; and

(2) to encourage disadvantaged firms to establish joint ventures and projects either among themselves or in cooperation with public or private sector organizations for the purpose of increasing the share of any market activity now being performed by disadvantaged business.

(b) For purposes of subsection (a)(2):

(1) The Assistant Secretary may, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, and with the prior written approval of the Attorney General, approve any agreement between such disadvantaged firms or public or private sector organizations providing for a joint program for market development if the Assistant Secretary finds that the joint program proposed will maintain and strengthen the free enterprise system and the economy of the Nation. The Assistant Secretary or the Attorney General may at any time withdraw approval of the agreement and the joint program for market development covered thereby, if either finds that the agreement or the joint program carried on under it is no longer in the best interests of the competitive free enterprise system and the economy of the Nation. A copy of the statement of any such finding and approval intended to be within the coverage of this paragraph, and a copy of any modification or withdrawal of approval, shall be published in the Federal Register. The authority conferred by this on the Assistant Secretary shall not be delegated.

(2) No act or omission to act, pursuant to and within the scope of any joint program for market development under an agreement approved by the Assist-

ant Secretary under the subsection, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act. Upon publication in the Federal Register of the notice of withdrawal of his approval of the agreement granted under this paragraph, either by the Assistant Secretary or by the Attorney General, the provisions of this paragraph shall not apply to any subsequent act or omission to act.

(c) At least one party to each agreement for a joint program for market development approved under (b) shall be a small business concern, as defined pursuant to section 3 of the Small business Act (15 U.S.C. 632). If there are more than two parties to such an agreement, a majority of the parties shall be small business concerns.

(d) In order to carry out the purposes of this section, the Administration is hereby authorized to provide financial assistance in the form of contracts, grants, or cooperative agreements to and with public and private sector organizations, including any association, business firm, trade association, or business organization. No assistance may be provided under the authority of this subsection if such assistance is primarily intended to facilitate the use by disadvantaged business of federally administered programs (not otherwise established by this Act) unless the Assistant Secretary obtains the prior concurrence and written approval of the Associate Ad-

ministrator for Minority Small Business and Capital Ownership Development of the Small Business Administration.

PUBLIC SECTOR

SEC. 102. (a) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(1) to consult and cooperate with State and local governments for the purpose of leveraging local resources to promote the position of disadvantaged business in the local economy, including, but not be limited to, assisting such governments to establish—

(A) procurement programs and goals for the utilization of disadvantaged business,

(B) management and technological assistance programs,

(C) financial and marketing assistance programs,

(D) mobilization activities designed to attract skilled labor for use by disadvantaged firms, and

(E) an informational program designed to inform local disadvantaged business of the availability of programs conducted under the authority of this section, and

(2) to convene meetings with leaders and officials of State and local governments for the purpose of rec-

ommending and promoting local administrative and legislative initiatives needed to advance the position of disadvantaged business in the local economy.

(b)(1) In order to carry out the purposes of subsection (a) the Administration is hereby authorized to provide financial assistance to State and local governments in the form of contracts, grants, or cooperative agreements.

(2) At least one hundred and twenty days before the beginning of each fiscal year, the Administration shall publish for public comment in the Federal Register the actual or anticipated amount of financial assistance that will or may be available in the immediately succeeding fiscal year for grants, contracts and cooperative agreements planned to be awarded pursuant to this section. Such publication shall also identify the proposed allocation of funds between the several States (and cities within such States) and the exact methodology used by the Administration to make such proposed allocations.

(3) At least sixty days prior to the beginning of each fiscal year, the Administration shall publish in the Federal Register its response to comments received pursuant to paragraph (2) and any change in the allocation methodology which may be adopted as a result thereof including its effect on the allocation of funds on the several States (and cities

within such States) for the immediately succeeding fiscal year.

TITLE II—CAPITAL FORMATION

ACCESS TO EQUITY CAPITAL

SEC. 201. (a) The Administration is hereby authorized to defray all or part of the costs of pilot or demonstration projects conducted by public or private organizations which are designed to assist disadvantaged business in obtaining access to equity capital.

(b) The Securities and Exchange Commission shall consult and cooperate with the Administration in an effort to promote access by disadvantaged business to securities markets and otherwise achieve the purposes of this title.

MBDA STUDY ON CAPITAL FORMATION ALTERNATIVES

(a) The Administrator shall conduct a study on alternatives for providing capital formation assistance to qualified disadvantaged business concerns, including—

(1) the implementation of a revolving fund the proceeds of which would be used to provide financial assistance to qualified disadvantaged business concerns through the purchase of equity investment in such concerns; and

(2) the implementation of a surety bond referral assistance program, specifically the implementation of an individual surety bond referral program.

(b) The Administrator shall submit a report to the Committee on Small Business of the House of Representatives and of the Senate within six months after the date of the enactment of this Act that contains the Administrator's findings of the study conducted under subsection (a). Such report shall specifically address the feasibility of the alternatives described in paragraphs (1) and (2) of such subsection and any other alternative explored by the Administration concerning the provision of capital formation assistance to qualified disadvantaged business concerns.

TITLE III—MANAGEMENT EDUCATIONAL DEVELOPMENT

DUTIES OF THE ADMINISTRATION

SEC. 301. It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate to—

(1) promote and assist the education and training of disadvantaged individuals in subjects directly related to business administration and management;

(2) join with and encourage accredited colleges and universities, leaders in business and industry, or other public or private entities, particularly for profit entities owned and operated by socially an economically disadvantaged individuals, to develop programs to offer scholarships and fellowships, apprenticeships, in-

ternships, and to sponsor seminars and conferences, and similar activities related to business for the benefit of disadvantaged individuals;

(3) stimulate and accelerate curriculum design and improvement in support of disadvantaged business development; and

(4) encourage and assist private institutions and organizations and State and local government agencies to undertake similar activities.

TITLE IV—RESEARCH AND INFORMATION

DUTIES OF THE ADMINISTRATION

SEC. 401. (a) Not later than one year after the effective date of this subsection, the Administration shall submit to the Congress a report detailing the types and amounts of productive resources (both public and private) needed to advance and represent disadvantaged business at all phases and levels of the economic system in numbers representative of the relative population of disadvantaged individuals in the United States. The report shall provide separate recommendations for achieving such representation through a phased approach involving short-term and long-term goals and objectives.

(b)(1) In order to achieve the purposes of this Act, the Administration shall—

(A) collect and analyze data, including, but not limited to, the causes for success or failure of businesses owned by the disadvantaged,

(B) perform evaluations of private and public sector programs designed to assist the development of disadvantaged business; and

(C) conduct research, studies, and surveys of economic conditions generally and how such conditions particularly affect the development of disadvantaged business.

(2) The Administration is hereby authorized to provide financial assistance by contract, grant, or cooperative agreement to public and private organizations to assist the Administration in carrying out the provisions of paragraph (1).

(3) The Administration is hereby authorized to—

(A) develop and maintain, on a current basis, a data bank on disadvantaged business, except that—

(i) such activity shall be conducted in cooperation and consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development of the Small Business Administration, and

(ii) such data bank does not duplicate the information stored or capable of being stored by the procurement automated source system (PASS)

maintained by the Small Business Administration; and

(B) establish and maintain an information clearinghouse for the collection and dissemination of demographic, economic, financial, managerial, and technical data pertinent to disadvantaged business and, to this end, to take such steps as the Administration may deem necessary and desirable to search for, collect, classify, coordinate, integrate, record, and catalog such information.

TITLE V—ADMINISTRATIVE AND MISCELLANEOUS POWERS OF THE ADMINISTRATION

ADMINISTRATIVE POWERS

SEC. 501. In performing the duties under this Act, the Administration is authorized to—

(1) adopt and use a seal for the Minority Business Development Administration which shall be judicially noticed;

(2) hold hearings, sit and act, and take testimony as the Administration may deem advisable;

(3) acquire in any lawful manner any property as the Administration may deem necessary or appropriate to conduct the activities authorized in this Act;

(4) make advance payments under grants, contracts, and cooperative agreements;

(5) donate without cost (except for costs of care and handling) for use in any Federal, State, or local government or in any recipient nonprofit organization for purposes of the development of disadvantaged business any real or tangible personal property acquired by the Administration under this Act. The Administration may impose reasonable terms, conditions, reservations, and restrictions upon the use of any property donated under this section;

(6) enter into agreements with other Federal agencies;

(7) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, to compensate individuals so employed at rates not in excess of the per diem rate authorized for GS–18 of the General Schedule, including traveltime, and allow them travel expenses (including per diem in lieu of subsistence) while away from their homes or regular places of business, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed: *Provided, however,* That contracts for such employment may be renewed annually;

(8) sue and be sued in any court of record of a State having general jurisdiction or in any United

States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, garnishment, or other similar process, mesne or final, shall be issued against the Administration or its property. Nothing herein shall be construed to except the activities under this Act from application of sections 507(b), 517, and 2679 of title 28, United States Code; and

(9) prescribe such rules, regulations, and procedures as the Administration may deem appropriate to carry out the provisions of this Act.

AUDITS

SEC. 502. (a) Each recipient of assistance under this Act shall keep such records as the Administration shall prescribe, including records which fully disclose the amount and the disposition by the recipient of the proceeds of such assistance, the total cost of the undertaking for which such assistance is given or used, the amount and nature of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Assistant Secretary, the Inspector General of the Department of Commerce, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit, investi-

gation, and examination to any books, documents, papers, records, and other materials of the recipient which are pertinent to the assistance received under this Act.

(c) Not later than eighteen months after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a thorough review of the programs authorized by this Act and shall transmit to the Congress a detailed report of the Comptroller's findings, including therein an evaluation of the effectiveness of the programs authorized to achieve the purpose of this Act, a description of any failure to comply with the requirements of this Act, and recommendations for corrective legislative or administrative action.

ANNUAL REPORT

SEC. 503. The Assistant Secretary shall, not later than one hundred and twenty days after the close of each fiscal year, submit to the President a full report of the Administration's activities hereunder during the previous fiscal year. Further, the Assistant Secretary shall, from time to time, submit to the President recommendations for legislation or other actions as the Assistant Secretary deems desirable to promote the purposes of this Act. Each Federal agency shall consult with the Assistant Secretary on a timely basis so that the Assistant Secretary may consider them for the Assistant Secretary's report and recommendations to the President.

SEPARABILITY

SEC. 504. If any provision of this Act or the application thereof to any persons or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its application to other persons and circumstances, but shall be confined in its operation to the provision of this Act or the application thereof to the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered.

AUTHORITY OF ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT

SEC. 505. (a) Section 7(j)(11) of the Small Business Act is amended to read as follows:

"(11) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to assistance provided by Federal agencies (excluding the Minority Business Development Administration) to small business concerns described in section 7(i) and small business concerns owned and controlled by the socially and economically disadvantaged as defined pursuant to section 8(d).".

(b) Nothing in this Act is intended to duplicate or limit any programs or projects administered by the Small Business Administration.

(c) Each Federal agency shall cooperate and consult with the Administration and the Small Business Administration to facilitate the accomplishment of the purposes of this Act and the Small Business Act.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 506. There are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act other than those for which appropriations may from time to time be specifically authorized.

TERMINATION OF AUTHORITY UNDER EXECUTIVE ORDER NUMBERED 11625

SEC. 507. Beginning on the date of the enactment of this Act, the powers and duties of the Administration shall be determined without regard to Executive Order Numbered 11625.

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J.86-527—O

CONGRESSMAN IKE SKELTON

Opening Statement

June 30, 1988

Welcome! First let me explain that we have two objectives today. First, there will be a short hearing with testimony for the record from our colleague from Maryland, the author of the bill under consideration today and a distinguished member of this panel, Mr. Mfume. He will review for this subcommittee a little of the history of H.R. 1769, the Minority Business Development Act. I also trust that he will go briefly over the changes that have been worked out which will form the basis of the substitute amendment that will be offered later. At the conclusion of his testimony, there will be an opportunity for questions or statements for the record in regard to H.R. 1769.

At that point, I intend to adjourn the hearing and convene a mark-up on H.R. 1769. which I believe will go smoothly. This is an important piece of legislation which has strong backing from every major minority business group.

Let me just say that I commend my colleague for his tireless efforts on behalf of small businesses everywhere and minority businesses in the case at hand.

His active participation on the small business committee is very welcome and we value his assistance, counsel and advice.

NICHOLAS MAVROULES
6TH DISTRICT, MASSACHUSETTS

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June 30, 1988

STATEMENT FOR THE RECORD ON H.R. 1769

BY CONGRESSMAN NICHOLAS MAVROULES

As the former chairman of the Subcommittee on Procurement, Innovation and Minority Enterprise Development, I am pleased that this subcommittee is today marking-up H.R. 1769, a bill introduced by Cong. Kweisi Mfume to give statutory authority to the Minority Business Development Agency (MBDA).

Presently, the MBDA has no statutory authority but exists simply as the result of an executive order first issued in 1969.

During my tenure as subcommittee chairman, we held two intensive hearings on this legislation. While numerous recommendations were made to improve the bill, we heard little dissension which speaks of the crucial need for H.R. 1769.

In the last few years, MBDA has been a political basketball -- as the Administration first proposed moving the Small Business Administration (SBA) over to the Department of Commerce as part of the MBDA, and then proposed moving MBDA over to the SBA.

The minority business community deserves better. The MBDA is the one office in the federal government that is specifically targeted toward assisting minority businesses. The Department of Defense has a 5% goal program to increase minority business participation in the defense procurement arena -- yet they haven't even come close to reaching that goal. I believe the guidance and advice provided by the MBDA to minority businesses can be critical in helping to meet not only DoD's 5% goal, but in increasing minority business participation in all federal contracting opportunities.

As a cosponsor of H.R. 1769, I believe the need for giving the MBDA permanent legislative authority is clear, thereby ensuring continuity in this program. The Congress must ensure that this important program is not subjected continually to the political whims of each administration.

A strong Minority Business Development Agency can help us make the Federal commitment to promoting successful minority enterprises a reality.

TESTIMONY ON H.R. 1769

THE MINORITY BUSINESS DEVELOPMENT ACT

HONORABLE KWEISI MFUME

JUNE 30, 1988

MR. CHAIRMAN, I APPEAR BEFORE THE SUBCOMMITTEE THIS MORNING BOTH IN MY CAPACITY AS A MEMBER OF THIS SUBCOMMITTEE AND AS THE SPONSOR OF THE MINORITY BUSINESS DEVELOPMENT ACT. ACCORDINGLY, I THANK YOU FOR GIVING ME THE OPPORTUNITY TO EXPRESS MY VIEWS TO THE MEMBERS OF THE SUBCOMMITTEE AND FOR SCHEDULING THIS MARKUP THIS MORNING.

THIS LEGISLATION IS VERY IMPORTANT TO ME AND I HAVE WORKED LONG AND HARD AT BEING ABLE TO REACH THE POINT OF A MARKUP. I WANTED TO TESTIFY JUST PRIOR TO THE MARKUP BECAUSE I FEEL IT IS IMPORTANT TO REITERATE THE IMPORTANCE OF H.R. 1769 TO THE MINORITY BUSINESS COMMUNITY AND I WANTED AN OPPORTUNITY TO HAVE THIS DIALOGUE WITH OTHER MEMBERS OF OUR SUBCOMMITTEE TO ENSURE THAT EVERYONE IS INFORMED OF WHAT THE LEGISLATION HAS GROWN TO BECOME AND THE CURRENT STATUS OF THE MINORITY BUSINESS DEVELOPMENT AGENCY (MBDA).

MR. CHAIRMAN, MY SINCERE THANKS GO OUT TO MR. CONTE AND OTHERS OF THE MINORITY PARTY WHO HAVE WORKED WITH ME, RATHER THAN AGAINST ME, IN FORMULATING LANGUAGE THAT WE CAN ALL AGREE UPON. IN MANY WAYS, I FEEL THE BILL HAS BEEN STRENGTHENED AND I AM HAPPY THAT TODAY WE ARE ABLE TO OFFER A JOINT SUBSTITUTE IN THE FORM OF A COMMITTEE PRINT.

WE ALL KNOW THAT OVER THE YEARS, BLACKS AND OTHER RACIAL AND ETHNIC MINORITIES HAVE SUFFERED THE EFFECTS OF RACIAL DISCRIMINATION. DISCRIMINATION WHICH HAS IMPAIRED THE ABILITY OF THE MINORITY BUSINESS COMMUNITY TO ACCESS RESOURCES AND MARKETS ESSENTIAL TO ECONOMIC VIABILITY. BOTH CONGRESS AND VARIOUS ADMINISTRATIONS HAVE SOUGHT TO FORMULATE PROGRAMS DESIGNED TO COUNTERACT THE PERPETUATED INEQUITIES AND ONE SUCH ADMINISTRATION WAS THE NIXON ADMINISTRATION WHICH ISSUED EXECUTIVE ORDER 11458 ESTABLISHING THE MBDA AND EXECUTIVE ORDER 11625 STRENGTHENING THE MBDA.

TODAY, AS THE QUESTION IS ASKED OF WHETHER THERE REMAINS A COMPELLING NEED FOR A SPECIAL FEDERAL PROGRAM TO PROVIDE SOCIALLY AND ECONOMICALLY DISADVANTAGED PERSONS "THE OPPORTUNITY FOR FULL PARTICIPATION IN OUR FREE ENTERPRISE SYSTEM," THE ANSWER, UNFORTUNATELY, REMAINS THAT OF "YES." THE NEED TO DEVOTE FEDERAL RESOURCES TO ASSIST MINORITY BUSINESSES IN OVERCOMING ECONOMIC DISADVANTAGES IS NO LESS APPARENT TODAY AND IS EVIDENCED BY THE CONTINUED ENACTMENT OF LEGISLATION PROVIDING OPPORTUNITIES FOR RACIAL AND ETHNIC MINORITY GROUPS TO PARTICIPATE IN FEDERAL, STATE AND LOCAL PROGRAMS.

THE MINORITY BUSINESS DEVELOPMENT AGENCY WAS CREATED TO PRESERVE AND STRENGTHEN MINORITY BUSINESSES. THIS IS THE ONLY AGENCY OF THE U.S. GOVERNMENT CREATED SPECIFICALLY TO PROMOTE THE CREATION AND EXPANSION OF MINORITY BUSINESSES. THE EXECUTIVE ORDER UNDER WHICH

MBDA CURRENTLY OPERATES IDENTIFIED A COMPELLING GOVERNMENT INTEREST IN "OBTAINING SOCIAL AND ECONOMIC JUSTICE" AND "IMPROVING THE FUNCTIONING OF OUR NATIONAL ECONOMY." THE MEANS WERE FURTHER ESTABLISHED THROUGH A CABINET LEVEL AGENCY UNDER DIRECT SUPERVISION OF THE SECRETARY OF COMMERCE.

NOT UNTIL 1987, HAD ANY ADMINISTRATION FORMALLY CHALLENGED THE APTNESS OF THE MBDA'S OPERATION FROM WITHIN THE COMMERCE DEPARTMENT. IN 1987, AND AGAIN THIS YEAR, THE CURRENT ADMINISTRATION HAS PROPOSED TO TRANSFER THE FUNCTIONS OF MBDA TO THE SMALL BUSINESS ADMINISTRATION (SBA).

PROPONENTS SUGGEST THAT SUCH A TRANSFER WILL CONSOLIDATE SIMILAR PROGRAMS AND ALLOW FOR IMPROVED COORDINATION. BUT THESE SAME PROPONENTS ARE THE ONES WHO ARGUED FOR THE ABOLISHMENT OF SBA CHARGING THE AGENCY WITH INEFFECTIVELY CARRYING OUT IS MANDATE. THE SBA WAS CHARGED WITH MISMANAGEMENT AND CORRUPTION. TO ADVOCATE TODAY FOR THE SBA TO ENCOMPASS FUNCTIONS OF ANOTHER AGENCY--UNDER THE GUISE OF MORE EFFICIENT AND ENHANCED SERVICES--IS HYPOCRITICAL, INDEED, ON THE PART OF THESE PROPONENTS.

MOREOVER, WHILE THE SBA PROCLAIMS THAT THEY WANT TO BRING MORE EFFICIENT AND EFFECTIVE SERVICE TO MINORITY BUSINESSES, THEIR BUDGET REQUESTS FOR THEIR OWN AGENCY SHOW NO SENSITIVITY TOWARDS THIS GROUP AND NO DESIRE TO PROVIDE SERVICES. FOR FY 1989, THEY CALLED FOR THE ELIMINATION OF SBA DIRECT LOANS NOW PROVIDED TO

MINORITIES, THESE ARE LOANS OF LAST RESORT AND CAN ONLY BE MADE IF THE APPLICANT CANNOT SECURE THE FUNDS FROM ANY OTHER SOURCES; THEY CALLED FOR THE REDUCTION IN THE AMOUNT OF LOAN GUARANTEES, THESE GUARANTEES ENTICE LENDERS TO MAKE LOANS TO MINORITY BUSINESSES; THEY CALLED FOR THE ELIMINATION OF THE MINORITY ASSISTANCE NOW PROVIDED THROUGH CONSULTING CONTRACTS UNDER THE 7(J) PROGRAM; THE ELIMINATION OF BUSINESS DEVELOPMENT EXPENSE FUNDS; THE ELIMINATION OF THE SPECIAL INCENTIVES TO MINORITY ENTERPRISE SMALL BUSINESS INVESTMENT COMPANIES (MESBICS) WHICH ENCOURAGES MESBICS TO PROVIDE VENTURE CAPITAL TO MINORITY BUSINESSES; AND TO PHASE OUT MANAGEMENT ASSISTANCE BEING PROVIDED THROUGH THE SMALL BUSINESS DEVELOPMENT CENTERS. THIS, TO ME, SHOWS NO INDICATION OF ANY DESIRE TO PROVIDE ADEQUATE SERVICES TO MINORITY BUSINESSES.

THERE ARE UNEQUIVOCAL DIFFERENCES BETWEEN THE FUNCTIONS AND ACTIVITIES OF THE SBA, WHICH SEEKS TO ENSURE THAT SMALL BUSINESS CONCERNS ENCOUNTER FAIRNESS IN COMPETITION AND SERVES MORE OF A FINANCING AND DIRECT LENDING FUNCTION, AND MBDA, WHICH SEEKS TO PROTECT FUNDAMENTAL RIGHTS OF MINORITY BUSINESSES TO FULLY PARTICIPATE IN THIS NATION'S ECONOMIC STRUCTURE. THE MBDA OFFERS MANAGEMENT AND TECHNOLOGY COMMERCIALIZATION ASSISTANCE, ACQUISITIONS ASSISTANCE, FRANCHISING ASSISTANCE, AND PRIVATE SECTOR ASSISTANCE--ALL OF WHICH THE SBA HAS NO SIMILAR PROGRAM FOR MINORITY FIRMS. MOST MINORITY BUSINESSES SERVED BY SBA ARE COMPANIES THAT HAVE BEEN CERTIFIED AS 8(A) COMPANIES. THERE ARE CURRENTLY 3,000 OR SO CERTIFIED 8(A) COMPANIES AS COMPARED TO OVER

700,000 MINORITY BUSINESS ENTERPRISES. ALSO, OF THE CLIENTS THAT MBDA SERVICES, ONLY APPROXIMATELY 3.5 PERCENT ARE 8(A) COMPANIES.

THE CREATION OF MBDA WITHIN THE DEPARTMENT OF COMMERCE WAS CAREFULLY THOUGHT OUT AND RECOGNIZED THE FEDERAL GOVERNMENT'S ROLE IN HELPING TO REMOVE THE BARRIERS OF WHICH MINORITY BUSINESSES ARE FACED WITH. CODIFYING THIS AGENCY WITHIN THE DEPARTMENT OF COMMERCE IS OUR OPPORTUNITY TO CONTINUE PROVIDING FOR EQUITABLE PARTICIPATION OF MINORITIES IN THE MAINSTREAM OF AMERICAN BUSINESS. THE SUBSTITUTE WHICH WILL BE OFFERED TODAY ADDRESSES CONCERNS ABOUT ACCESS TO EQUITY CAPITAL, NOT THROUGH THE ORIGINALLY PROPOSED REVOLVING FUND, BUT RATHER THROUGH THE MANDATE OF A STUDY INTO ALTERNATIVE WAYS OF PROVIDING ACCESS TO CAPITAL. AND, WE'VE BEEN ABLE TO AGREE TO OTHER MINOR CHANGES IN THE LANGUAGE THAT ALL STAFF MEMBERS HAVE BEEN MADE AWARE OF AND THAT I WILL BE HAPPY TO ELABORATE ON IF NECESSARY. THE LEGISLATION CAN BASICALLY BE BROKEN DOWN INTO SIX GENERAL PARTS WITH THE FIRST FOUR SECTIONS SETTING OUT THE PURPOSE OF THE ACT, DEFINING TERMS AND ESTABLISHING THE MINORITY BUSINESS DEVELOPMENT ADMINISTRATION (MBDA). TITLES ONE THROUGH FOUR OUTLINE THE MBDA'S DUTIES IN FOUR AREAS: MARKET DEVELOPMENT, CAPITAL FORMATION, MANAGEMENT EDUCATION DEVELOPMENT, AND RESEARCH AND INFORMATION. AND TITLE FIVE OF THE BILL SETS FORTH THE MBDA'S ADMINISTRATIVE AND MISCELLANEOUS POWERS.

MR. CHAIRMAN, IT IS EXTREMELY IMPORTANT THAT WE ACT TO PLACE THE MBDA ON STABLE GROUND. NOT ONLY IS THE AGENCY SUBJECT TO WHIMSICAL

VIEWS OF CHANGING ADMINISTRATIONS, BUT IT IS ALSO SUBJECT TO APPROPRIATIONS STRUGGLES WITHOUT THE PROPER AUTHORIZATION. THIS YEAR, APPROPRIATIONS IN THE HOUSE WERE HELD OFF FOR ALL PROGRAMS STILL AWAITING AUTHORIZATIONS. THE MBDA WAS CATEGORIZED WITH THIS GROUP OF PROGRAMS, HOWEVER, THE PROBLEM WITH THE MBDA BEING LUMPED INTO THIS CATEGORY IS THAT IS HAS NEVER GONE THROUGH THE AUTHORIZATION PROCESS BECAUSE IT OPERATES PER AN EXECUTIVE ORDER. THUS, APPROPRIATIONS FOR COMMERCE HAVE BEEN PASSED IN THE HOUSE WITHOUT FUNDING FOR THE MBDA.

THE COMMITMENT TO AIDING MINORITY BUSINESS MUST BECOME A FUNDAMENTAL, INTEGRATED PART OF THE AMERICAN ECONOMIC SYSTEM AT ALL LEVELS AND IN ESTABLISHING THAT INTEGRAL PART, THE MBDA MUST BE PLACED ON SOLID GROUND. TODAY WE HAVE A SIGNIFICANT OPPORTUNITY TO RID THE MBDA OF ITS VULNERABLE STATUS BY CODIFYING IT AND THEREBY BRINGING CONTROL OF THE AGENCY WITHIN GREATER REACH OF THE CONGRESS AND PROVIDING OURSELVES WITH THE CHANCE TO PLAY A ROLE IN THE FURTHERING AND STRENGTHENING OF THE AGENCY'S GOALS AND OBJECTIVES.

H.R. 1769 HAS THE COMPLETE SUPPORT OF THE CONGRESSIONAL BLACK CAUCUS AS WELL AS THE MAJOR TRADE ASSOCIATIONS THROUGHOUT OUR NATION WHICH REPRESENT THE INTEREST OF MINORITY BUSINESSES. I AM HOPING FOR THE COMPLETE SUPPORT OF ALL OTHER SEGMENTS OF OUR SOCIETY.

THIS CONCLUDES MY TESTIMONY.

CRS-2

Section by Section Description

Section 1

Gives the short title of "Minority Business Development Act of 1987" to the act.

Section 2

Sets out the findings and purposes of Congress in enacting the bill. The bill would have Congress find that many individuals are socially and economically disadvantaged because of their identification as members of certain minority groups; that it is in the national interest to expeditiously ameliorate the conditions of these disadvantaged groups by providing maximum opportunity for development of business concerns owned by members of these groups; and that the best way to provide this opportunity is through a joint effort between the public and private sectors to promote development of minority owned business.

The purpose of the bill is to establish an administration within the Department of Commerce which will promote and administer programs in the private and public sectors to assist the development of business owned by the disadvantaged by increasing their access to skilled labor, capital, management and technology.

Section 3

Is the definitional section defining such general terms as state, secretary, agency etc. The bill specifically includes within the definitions of socially and economically disadvantaged individuals those individuals found to be disadvantaged by the Small Business Administration under §8 of the Small Business act or pursuant to the Small Business Investment Act.

Section 4

Establishes the MBDA, places it under an Assistant Secretary of Commerce and requires a report to Congress within 120 days of enactment on the organizational structure of the MBDA and its functional relationship within the Department of Commerce.

Title I

Charges the MBDA with the duty and the power to assist disadvantaged business concerns in the area of market development.

Section 101

Covers programs for such assistance to be carried out in cooperation with the private sector. The MBDA is to aid in making management, technological, skilled labor, financial and marketing services available to the disadvantaged business concerns and encourage these concerns to enter into joint ventures with the purpose of increasing their share of market activity.

To facilitate these joint ventures, exemption from the antitrust laws and the Federal Trade Commission Act may be granted to these joint ventures upon prior written approval of the Attorney General and a finding by the Assistant Secretary that the joint program will maintain and strengthen the free enterprise system and the economy of the nation. The MBDA may also provide financial assistance for market development. But if such assistance is to be used by the disadvantaged concern to facilitate use of a federal program not established by this act, written approval of the Associate Administrator for Minority Small Business and Capital Ownership Development of the SBA is required.

CRS-4

Section 102

Covers cooperative programs with the public sector (State and local governments) to promote the position of disadvantaged concerns in the local economy through assistance programs in the areas of procurement, management, technology, finances, and marketing and in attracting skilled labor. Financial assistance to the State and local governments for these programs is authorized and is to be allocated, among and within the States, considering only the population and unemployment rate of disadvantaged individuals and the numbers of disadvantaged businesses in the area.

Title II

Authorizes the MBDA to provide assistance to disadvantaged concerns for capital formation.

Section 201

Allows payment by the MBDA for demonstration or pilot projects which are designed to assist disadvantaged businesses to obtain equity capital.

Section 202

Establishes a revolving fund to be used to provide financial assistance, in the form of equity investment, to disadvantaged businesses engaged in manufacturing or production which have high growth potential.

Title III

Empowers the MBDA to promote and assist in the education and training of disadvantaged individuals in business administration and management.

Section 301

Calls for the MBDA to join with and encourage colleges, leaders in business or other private or public entities to develop programs, offer

scholarships, apprenticeships and other similar activities to benefit disadvantaged individuals in the area of business administration and management.

Title IV

Requires the MBDA to prepare and submit to Congress a report concerning what commitment of resources would be required, under a 10 year, 15 year and 20 year program, to advance and represent disadvantaged business in our economy at a level which would have existed were it not for past discrimination. The title also authorizes the development and maintenance of a data bank and clearing-house on disadvantaged business. This bank would be developed in cooperation with the SBA and not duplicate the SBA's system.

Title V

Sets out the administrative and miscellaneous powers of the MBDA.

Section 501

Details the usual administrative powers of a governmental entity. (To adopt and use a seal, acquire property, make contracts, etc.).

Section 502

Requires each recipient under the act to keep appropriate records which are to be available for audit.

Section 503

Requires the head of the MBDA to make an annual report to the President.

Section 504

Is a separability provision.

Section 505

Calls for cooperation between all Federal Agencies and the MBDA and the SBA. The section stresses that the act is not to duplicate or limit any SBA programs or projects.

Section 506

Authorizes for appropriation such funds as are necessary to carry out the act.

Section 507

Removes the MBDA from the authority granted by E.O. 11625, which empowered the Secretary of Commerce to establish the Minority Business Development Agency in 1971.

John R. Luckey
Legislative Attorney

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

JUN 28 1988

Honorable Ike Skelton, Chairman
Subcommittee on Procurement, Innovation &
Minority Enterprise Development
House Small Business Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I understand that on June 30, 1988 your Subcommittee will be marking up Congressman Mfume's bill, H.R. 1769, to statutorily establish a Minority Business Development Administration within the Department of Commerce. The Minority Business Development Agency (MBDA) was previously established by Executive Order. I would like to express the Small Business Administration's (SBA) position on this legislation.

The President's FY 89 budget that was transmitted to Congress this past February contained a proposal to transfer the MBDA to SBA in FY 1989. This was a revision of a similar proposal made in the FY 1988 President's budget. It is our belief, and that of the Administration, that the proposal as contained in the FY 1989 budget will address the Congress' concerns regarding the minority business population in the Nation. At the same time, the proposal will allow for a much more consistent, effective, and efficient delivery of services to this clientele. For this reason, we strongly oppose the establishment of a Minority Business Development Administration and the accompanying provisions contained in H.R. 1769.

SBA staff has developed a plan to effect the transfer of MBDA to SBA. We are working to minimize any adverse impact on the employees at both agencies, as well as on the minority business community of such transfer of functions. We are confident that the result of these working group discussions will be a workable action plan for implementation of the transfer in FY 1989, per the President's proposal.

The combination of the MBDA functions within the SBA is a logical move that should greatly enhance the level of service to the minority business community. For this reason, we strongly support this proposal as contained in the FY 1989 President's budget.

In addition to the concerns expressed above about the creation of a Minority Business Development Administration, SBA would strongly object to specific provisions in the bill. Title II of the bill would create a revolving fund to provide equity investments in disadvantaged businesses. This fund would duplicate assistance provided by SBA's credit programs. Access for equity capital is provided by Minority Enterprise Small Business Investment Companies (MESBICs) and Small Business Investment Companies (SBICs). In contrast to providing access to equity capital, Title II would permit the Federal Government to make direct equity investments in these businesses. This would be inappropriate because it would put the government in the role of shareholder and would, under the concepts adopted by the 1967 President's Commission on Budget concepts, bring these businesses on-budget.

Secondly, SBA has serious doubts about the feasibility of the report required by Title IV of the bill, which would require ten-, fifteen-, and twenty-year programs to correct the effects of past discrimination. There is no way to objectively determine the numbers and level of representation disadvantaged businesses would have achieved but for past discrimination. In addition, the data collection and analyses that would be required for this study would be burdensome to the public and very costly.

I will be happy to discuss this proposal further with you at your convenience.

Sincerely,

James Abdnor
Administrator

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